

REMARKS

Amendments

Claim 31 has been amended by incorporating the feature of the absence of expression of the negative marker ALK-1. This corresponds to an embodiment previously recited in claim 32 (and claim 60).

Claim 32 has been amended to remove the reference to the combination of FGFR-3 and ALK-1 (now incorporated into claim 31) and to maintain only the reference to the detection of the negative marker ALK-1 in combination with positive marker BMP-2. Claim 32 has been amended to remove the term “further” so as to avoid potential clarity issues as step (b) of claim 32 corresponds to step (b) of independent claim 31.

Dependent claim 33 has been amended to introduce the limitation of former claim 55, to ensure consistency with the amendment to independent claim 31.

Claim 55 has accordingly been cancelled.

Claim 57 has been amended to introduce a reference to determining the expression of the negative marker ALK-1, in accordance with the amendment made to independent claim 31.

Claim 60 has been cancelled.

Rejections under 35 U.S.C. §112, first paragraph

The Office has indicated on page 4 of the Action that “*the instantly claimed method as drafted would need to require at least the determination of both FGFR-3 and the negative marker ALK-1, to identify chondrocytes as having chondrocyte phenotypic stability.*” As noted above, the claims, as amended, recite “determining the expression by said cells of a positive marker of chondrocyte phenotypic stability which is BMP-2 and/or determining the expression by said cells of a positive marker of chondrocyte phenotypic stability which is FGFR-3 and the absence of expression of a negative marker which is ALK-1,” and it is respectfully requested that the section 112 rejection be withdrawn.

Applicants note that the present amendment has been made to advance prosecution and reserve the right to pursue any cancelled subject matter in this or a continuing application.

Obviousness-Type Double Patenting

Claims 31-36, 43-45, 51, and 55-61 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 3-15, 27, 30, and 33 of copending Application No. 10/422,475. Applicants, as noted previously, will address this issue, if appropriate, upon an indication of allowable subject matter.

Information Disclosure Statement

Applicants note that the Forms PTO-1449 that were submitted with Information Disclosure Statements filed on April 17, 2007 and February 21, 2008 have not been initialed and returned, and hereby request that they be initialed and returned with the next Office action.

Application Title

Applicants respectfully request entry of the amendment filed on June 21, 2007, which amended the application title to correctly reflect the title of the application as filed.

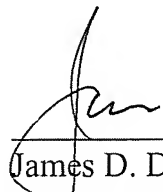
CONCLUSION

Applicants submit that the claims are in condition for allowance, and such action is respectfully requested.

If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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